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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,242	02/01/2002	Andrew Richard Wainwright	294-107 PCT/US	9497
7590		12/21/2007	EXAMINER	
Ronald J. Baron			BECKER, DREW E	
Hoffmann & Baron			ART UNIT	
6900 Jericho Turnpike			PAPER NUMBER	
Syosset, NY 11791			1794	
MAIL DATE			DELIVERY MODE	
12/21/2007			PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/936,242

Applicant(s)

WAINWRIGHT ET AL.

Examiner

Drew E. Becker

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/30/07.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

#### **4DETAILED ACTION**

##### ***Response to Amendment***

1. The declaration of Dr. Bruinenberg under 37 CFR 1.132 filed 10/31/07 is insufficient to overcome the rejection of claims 1-18 since it does not mention or address any of the previously relied upon references. Regardless, a new rejection is found below. It should also be noted that the European Commission for Consumer Policy and Consumer Health Protection issued an opinion on 7/18/02 in which "amylopectin potatoes" were approved for placement on the market.

##### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 9-15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lanner et al [Pat. No. 6,022,574] in view of Tallberg et al [Pat. No. 5,824,798] and Buwalda [Sheer Versatility].

Lanner et al teaches a snack food comprising potato flour in the form of flakes and/or granules(column 3, line 8), the flour constituting 35-60% of the product (column 2, line 4), other cereal flours (column 3, line 4), additives such as emulsifiers (column 3, line 47), the snack products being fried and extruded

(column 2, lines 2 & 25), 2-20% pregelatinized waxy starches (column 4, lines 47-54), and oil (column 4, line 55). Lanner et al do not recite using a potato with an amylopectin content of at least 95%, greater expansion, and the potato being genetically modified. Tallberg et al teach a genetically modified potato with an amylopectin content of 100% (claim 1; column 1, lines 37-44). Buwalda teach a potato with 100% amylopectin starch (Table 1) and improved expansion properties in snack foods (page 13, column 3, paragraph 1). It would have been obvious to one of ordinary skill in the art to incorporate the high amylopectin potato of Tallberg et al and Buwalda into the invention of Lanner et al since all are directed to food products, since Lanner et al did not specify the particular types of potatoes to be used, since Lanner et al already used 2-20% waxy starches (column 4, line 54) were commonly known to be high in amylopectin content, since Lanner et al teach chemically modifying the starch to alter the properties of the dough (column 3, line 18), since a small number of the 100% amylopectin potatoes of Tallberg et al would have easily provided the necessary amylopectin content required by Lanner et al, since the 100% amylopectin potato starch of Tallberg et al has not been subjected to chemical modification, making it more suitable as a food ingredient (column 1, lines 37-44), and since the 100% amylopectin potato starch provided improved expansion properties in snack foods, as taught by Buwalda (page 13, column 3, paragraph 1). It is noted that the present claims do not require any specific amount of "amylopectin potatoes" in the snack food, therefore even a small substitution (such as a single potato in a batch of 1,000 conventional potatoes) would satisfy the present claims.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lanner et al, in view of Tallberg et al and Buwalda, as applied above, and further in view of Fazzolare et al [Pat. No. 4,834,996].

Lanner et al, Tallberg et al, and Buwalda teach the above mentioned components. Lanner et al, Tallberg et al, and Buwalda do not recite baking. Fazzolare et al teach a method for making baked, extruded potato-based snack foods (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the baking of Fazzolare et al into the invention of Lanner et al, in view of Tallberg et al and Buwalda, since all are directed to potato-based food products, since Lanner et al already included cooking via frying, since Fazzolare et al taught that snack foods were commonly cooked via baking, and since many consumers preferred baked snack foods due to their lower fat content.

5. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lanner et al, in view of Tallberg et al and Buwalda, as applied above, and further in view of Martines-Serna Villagram et al [Pat. No. 6,544,580].

Lanner et al, Tallberg et al, and Buwalda teach the above mentioned components. Lanner et al, Tallberg et al, and Buwalda do not recite using a Saturna variety potato, or less than 5% reducing sugars. Martines-Serna Villagram et al teach a snack food comprising potato flakes (column 10, lines 15-28), using Saturna variety potatoes (column 4, line 28), and using less than 5% reducing sugars (column 11, lines 50-64). It would have been obvious to one of ordinary skill in the art to incorporate the Saturna potatoes and less than 5% reducing sugars of Martines-Serna Villagram et al into the invention of Lanner et

al, in view of Tallberg et al and Buwalda, since all are directed to potato-based food products, since Lanner et al simply did not specify the potato varieties used and amount of reducing sugars, and since Martines-Sema Villagram et al teaches that Saturna potatoes and less than 5% reducing sugars were common materials and traits for extruded potato products.

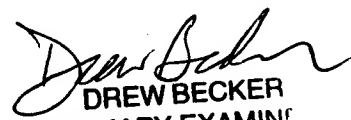
### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
DREW BECKER  
PRIMARY EXAMINER  
12/20/07